

Part VIII

VSMP Permit Conditions

4VAC50-60-430. Conditions applicable to all permits.

The following conditions apply to all VSMP permits. Additional conditions applicable to VSMP permits are in 4VAC50-60-440. All conditions applicable to VSMP permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to this regulation must be given in the permit.

A. The permittee shall comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the Act and the CWA, except that noncompliance with certain provisions of the permit may constitute a violation of the Act but not the CWA. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

The permittee shall comply with effluent standards or prohibitions established under §307(a) of the CWA for toxic pollutants within the time provided in the chapters that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

B. If the permittee wishes to continue an activity regulated by the permit after the expiration date of the permit, the permittee must apply for and obtain a new permit.

C. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

D. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of the permit that has a reasonable likelihood of adversely affecting human health or the environment.

E. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

F. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

G. Permits do not convey any property rights of any sort, or any exclusive privilege.

H. The permittee shall furnish to the department, within a reasonable time, any information that the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the Act. The permittee shall also furnish to the department upon request, copies of records required to be kept by the permit.

I. The permittee shall allow the director as the board's designee, or an authorized representative (including an authorized contractor acting as a representative of the administrator), upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and
4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA and the Act, any substances or parameters at any location.

J. Monitoring and records.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit, for a period of at least three years from the date of the sample, measurement, report or application. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

3. Records of monitoring information shall include:

- a. The date, exact place, and time of sampling or measurements;
- b. The individual or individuals who performed the sampling or measurements;
- c. The date or dates analyses were performed;
- d. The individual or individuals who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analyses.

4. Monitoring results must be conducted according to test procedures approved under 40 CFR Part 136 (2000) or alternative EPA approved methods, unless other test procedures have been specified in the permit.

K. All applications, reports, or information submitted to the permit-issuing authority shall be signed and certified as required by 4VAC50-60-370.

L. Reporting requirements.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
 - a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 4VAC50-60-420 A; or
 - b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in the permit.
2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.
3. Permits are not transferable to any person except after notice to the department. The board may require modification or revocation and reissuance of permits to change the name of the permittee and incorporate such other requirements as may be necessary under the Act or the CWA.
4. Monitoring results shall be reported at the intervals specified in the permit.
 - a. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the department.
 - b. If the permittee monitors any pollutant specifically addressed by the permit more frequently than required by the permit using test procedures approved under 40 CFR Part 136 (2000) or as otherwise specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.
 - c. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the permit.
5. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date.
6. If any unusual or extraordinary discharge including a bypass or upset should occur from a facility and such discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the Department of Environmental Quality and the department by telephone after the discovery of such discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the Department of Environmental Quality and the department within five days of discovery of the discharge in accordance with subdivision 7 a of this subsection. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:
 - a. Unusual spillage of materials resulting directly or indirectly from processing operations;
 - b. Breakdown of processing or accessory equipment;
 - c. Failure or taking out of service of the treatment plant or auxiliary facilities (such as sewer lines or wastewater pump stations); and
 - d. Flooding or other acts of nature.
7. Twenty-four hour reporting.
 - a. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided

within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

b. The following shall be included as information which must be reported within 24 hours under this subdivision:

(1) Any unanticipated bypass that exceeds any effluent limitation in the permit.

(2) Any upset that exceeds any effluent limitation in the permit.

(3) Violation of a maximum daily discharge limitation for any of the pollutants listed in the permit to be reported within 24 hours.

c. The board may waive the written report on a case-by-case basis for reports under this subdivision if the oral report has been received within 24 hours.

8. The permittee shall report all instances of noncompliance not reported under subdivisions 4, 5, 6, and 7 of this subsection, in writing at the time the next monitoring reports are submitted. The reports shall contain the information listed in subdivision 7 of this subsection.

9. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the department, it shall promptly submit such facts or information.

M. Bypass.

1. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of subdivisions 2 and 3 of this subsection.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in subdivision L 7 of this section (24-hour notice).

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under subdivision 2 of this subsection.

b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed in subdivision 3 a of this subsection.

N. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of subdivision 2 of this subsection are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee can identify the cause or causes of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in subdivision L 7 b (2) of this section (24-hour notice); and

d. The permittee complied with any remedial measures required under subsection D of this section.

3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

4VAC50-60-440. Additional conditions applicable to Municipal Separate Storm Sewer System VSMP permits.

In addition to those conditions set forth in 4VAC50-60-430, the operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the board under 4VAC50-60-380 A 1 e must submit an annual report by a date specified in the permit for such system. The report shall include:

1. The status of implementing the components of the stormwater management program that are established as permit conditions;
2. Proposed changes to the stormwater management programs that are established as permit condition. Such proposed changes shall be consistent with 4VAC50-60-380 C 2 d;
3. Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application;
4. A summary of data, including monitoring data, that is accumulated throughout the reporting year;
5. Annual expenditures and budget for year following each annual report;
6. A summary describing the number and nature of enforcement actions, inspections, and public education programs; and
7. Identification of water quality improvements or degradation.

4VAC50-60-450. Establishing permit conditions.

A. In addition to conditions required in all permits, the board shall establish conditions, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the Stormwater Management Act, the State Water Control Law, the CWA, and attendant regulations. These shall include conditions under 4VAC50-60-480 (duration of permits), 4VAC50-60-490 (schedules of compliance) and 4VAC50-60-460 (monitoring).

B. 1. An applicable requirement is a state statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. An applicable requirement is also any requirement that takes effect prior to the modification or revocation and reissuance of a permit to the extent allowed in Part X of this chapter.

2. New or reissued permits, and to the extent allowed under Part X of this chapter modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in 4VAC50-60-460 and 4VAC50-60-470.

C. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

4VAC50-60-460. Establishing limitations, standards, and other permit conditions.

In addition to the conditions established under 4VAC50-60-450 A, each VSMP permit shall include conditions meeting the following requirements when applicable.

A. 1. Technology-based effluent limitations and standards based on effluent limitations and standards promulgated under §301 of the CWA, on new source performance standards

promulgated under §306 of CWA, on case-by-case effluent limitations determined under §402(a)(1) of CWA, or a combination of the three. For new sources or new dischargers, these technology-based limitations and standards are subject to the provisions of 4VAC50-60-420 B (protection period).

2. The board may authorize a discharger subject to technology-based effluent limitations guidelines and standards in a VSMP permit to forego sampling of a pollutant found at 40 CFR Subchapter N (2000) if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. This waiver is good only for the term of the permit and is not available during the term of the first permit issued to a discharger. Any request for this waiver must be submitted when applying for a reissued permit or modification of a reissued permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier permit term, that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. Any grant of the monitoring waiver must be included in the permit as an express permit condition and the reasons supporting the grant must be documented in the permit's fact sheet or statement of basis. This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards.

B. Other effluent limitations and standards under §§301, 302, 303, 307, 318 and 405 of the CWA. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under §307(a) of the CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the board shall institute proceedings under this chapter to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

C. Water quality standards and state requirements. Any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under §§301, 304, 306, 307, 318 and 405 of the CWA necessary to:

1. Achieve water quality standards established under the State Water Control Law and §303 of the CWA, including state narrative criteria for water quality.

a. Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the board determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any Virginia water quality standard, including Virginia narrative criteria for water quality.

b. When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a Virginia water quality standard, the board shall use procedures that account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

c. When the board determines, using the procedures in subdivision 1 b of this subsection, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a Virginia numeric criteria within a

Virginia water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.

d. Except as provided in this subdivision, when the board determines, using the procedures in subdivision 1 b of this subsection, toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable Virginia water quality standard, the permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the board demonstrates in the fact sheet or statement of basis of the VSMP permit, using the procedures in subdivision 1 b of this subsection, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative Virginia water quality standards.

e. Where Virginia has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable Virginia water quality standard, the board must establish effluent limits using one or more of the following options:

(1) Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the board demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed Virginia criterion, or an explicit policy or regulation interpreting Virginia's narrative water quality criterion, supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, August 1994, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents; or

(2) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under §307(a) of the CWA, supplemented where necessary by other relevant information; or

(3) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

(a) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;

(b) The fact sheet required by 4VAC50-60-520 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(c) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(d) The permit contains a reopener clause allowing the board to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

f. When developing water quality-based effluent limits under this subdivision the board shall ensure that:

(1) The level of water quality to be achieved by limits on point sources established under this subsection is derived from, and complies with all applicable water quality standards; and

(2) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by Virginia and approved by EPA pursuant to 40 CFR 130.7 (2000);

2. Attain or maintain a specified water quality through water quality related effluent limits established under the State Water Control Law and §302 of the CWA;

3. Conform to the conditions of a Virginia Water Protection Permit (VWPP) issued under the State Water Control Law and §401 of the CWA;

4. Conform to applicable water quality requirements under §401(a)(2) of the CWA when the discharge affects a state other than Virginia;

5. Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under the Act or regulations in accordance with §301(b)(1)(C) of the CWA;

6. Ensure consistency with the requirements of a Water Quality Management plan established by the State Water Control Board pursuant to 9VAC25-720 and approved by EPA under §208(b) of the CWA;

7. Incorporate §403(c) criteria under 40 CFR Part 125, Subpart M (2000), for ocean discharges; or

8. Incorporate alternative effluent limitations or standards where warranted by fundamentally different factors, under 40 CFR Part 125, Subpart D (2000).

D. Technology-based controls for toxic pollutants. Limitations established under subsections A, B, or C of this section, to control pollutants meeting the criteria listed in subdivision 1 of this subsection. Limitations will be established in accordance with subdivision 2 of this subsection. An explanation of the development of these limitations shall be included in the fact sheet.

1. Limitations must control all toxic pollutants that the board determines (based on information reported in a permit application or in a notification required by the permit or on other information) are or may be discharged at a level greater than the level that can be achieved by the technology-based treatment requirements appropriate to the permittee; or

2. The requirement that the limitations control the pollutants meeting the criteria of subdivision 1 of this subsection will be satisfied by:

a. Limitations on those pollutants; or

b. Limitations on other pollutants that, in the judgment of the board, will provide treatment of the pollutants under subdivision 1 of this subsection to the levels required by the Stormwater Management Act, the State Water Control Law, and 40 CFR Part 125, Subpart A (2000).

E. A notification level that exceeds the notification level of 4VAC50-60-440 A 1 a, b, or c, upon a petition from the permittee or on the board's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee.

F. Twenty-four-hour reporting. Pollutants for which the permittee must report violations of maximum daily discharge limitations under 4VAC50-60-430 L 7 b (3) (24-hour reporting) shall be listed in the permit. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

G. Durations for permits, as set forth in 4VAC50-60-480.

H. Monitoring requirements. The following monitoring requirements:

1. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);
2. Required monitoring including type, intervals, and frequency sufficient to yield data that are representative of the monitored activity including, when appropriate, continuous monitoring;
3. Applicable reporting requirements based upon the impact of the regulated activity and as specified in 4VAC50-60-430 and in subdivisions 5 through 8 of this subsection. Reporting shall be no less frequent than specified in the above regulation;
4. To assure compliance with permit limitations, requirements to monitor:
 - a. The mass (or other measurement specified in the permit) for each pollutant limited in the permit;
 - b. The volume of effluent discharged from each outfall;
 - c. Other measurements as appropriate including pollutants; frequency, rate of discharge, etc., for noncontinuous discharges; pollutants subject to notification requirements; or as determined to be necessary on a case-by-case basis pursuant to the Stormwater Management Act, the State Water Control Law, and §405(d)(4) of the CWA; and
 - d. According to test procedures approved under 40 CFR Part 136 (2000) for the analyses of pollutants having approved methods under that part, or alternative EPA approved methods, and according to a test procedure specified in the permit for pollutants with no approved methods;
5. Except as provided in subdivisions 7 and 8 of this subsection, requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year;
6. Requirements to report monitoring results for stormwater discharges associated with industrial activity that are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year;
7. Requirements to report monitoring results for stormwater discharges (other than those addressed in subdivision 6 of this subsection) shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require:
 - a. The discharger to conduct an annual inspection of the facility site to identify areas contributing to a stormwater discharge and evaluate whether measures to reduce pollutant loading identified in a stormwater pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;
 - b. The discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of noncompliance;
 - c. Such report and certification be signed in accordance with 4VAC50-60-370; and
8. Permits which do not require the submittal of monitoring result reports at least annually shall require that the permittee report all instances of noncompliance not reported under 4VAC50-60-430 L 1, 4, 5, 6, and 7 at least annually.

I. Best management practices to control or abate the discharge of pollutants when:

1. Authorized under §402(p) of the CWA for the control of stormwater discharges;
2. Numeric effluent limitations are infeasible; or
3. The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the Stormwater Management Act, the State Water Control Law, and the CWA.

J. Reissued permits.

1. In the case of effluent limitations established on the basis of §402(a)(1)(B) of the CWA, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under §304(b) of the CWA subsequent to the original issuance of such permit, to contain effluent limitations that are less stringent than the comparable effluent limitations in the previous permit. In the case of effluent limitations established on the basis of §301(b)(1)(C) or §303(d) or (e) of the CWA, a permit may not be renewed, reissued, or modified to contain effluent limitations that are less stringent than the comparable effluent limitations in the previous permit except in compliance with §303(d)(4) of the CWA.

2. Exceptions. A permit with respect to which subdivision 1 of this subsection applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant, if:

a. Material and substantial alterations or additions to the permitted facility occurred after permit issuance that justify the application of a less stringent effluent limitation;

b. (1) Information is available that was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and that would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

(2) The board determines that technical mistakes or mistaken interpretations of the Act were made in issuing the permit under §402(a)(1)(B) of the CWA;

c. A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

d. The permittee has received a permit modification under the Stormwater Management Act, the State Water Control Law, and §§301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or §316(a) of the CWA; or

e. The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

Subdivision 2 b of this subsection shall not apply to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and such revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of the Act or the CWA or for reasons otherwise unrelated to water quality.

3. In no event may a permit with respect to which subdivision 2 of this subsection applies be renewed, reissued, or modified to contain an effluent limitation that is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no

event may such a permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a Virginia water quality standard applicable to such waters.

K. Navigation. Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired in accordance with 4VAC50-60-570.

L. Qualifying state, tribal, or local programs.

1. For stormwater discharges associated with small construction activity identified in 4VAC50-60-10, the board may include permit conditions that incorporate qualifying state, tribal, or local erosion and sediment control program requirements by reference. Where a qualifying state, tribal, or local program does not include one or more of the elements in this subdivision, then the board must include those elements as conditions in the permit. A qualifying state, tribal, or local erosion and sediment control program is one that includes:

a. Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

b. Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

c. Requirements for construction site operators to develop and implement a stormwater pollution prevention plan. A stormwater pollution prevention plan includes site descriptions; descriptions of appropriate control measures; copies of approved state, tribal or local requirements; maintenance procedures; inspection procedures; and identification of nonstormwater discharges; and

d. Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

2. For stormwater discharges from construction activity that does not meet the definition of a small construction activity, the board may include permit conditions that incorporate qualifying state, tribal, or local erosion and sediment control program requirements by reference. A qualifying state, tribal or local erosion and sediment control program is one that includes the elements listed in subdivision 1 of this subsection and any additional requirements necessary to achieve the applicable technology-based standards of "best available technology" and "best conventional technology" based on the best professional judgment of the permit writer.

4VAC50-60-470. Calculating VSMP permit conditions .

A. Permit effluent limitations, monitoring requirements, standards and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided under 4VAC50-60-460.

B. All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of total recoverable metal as defined in 40 CFR Part 136 (2000) unless:

1. An applicable effluent standard or limitation has been promulgated under the CWA and specifies the limitation for the metal in the dissolved or valent or total form; or

2. In establishing permit limitations on a case-by-case basis under 40 CFR 125.3 (2000), it is necessary to express the limitation on the metal in the dissolved or valent or total form to carry

out the provisions of the CWA, Stormwater Management Act and the State Water Control Law;
or

3. All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium).

C. Discharges that are not continuous, as defined in 4VAC50-60-10, shall be particularly described and limited, considering the following factors, as appropriate:

1. Frequency;
2. Total mass;
3. Maximum rate of discharge of pollutants during the discharge; and
4. Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure.

D. Mass Limitations.

1. All pollutants limited in permits shall have limitations, standards or prohibitions expressed in terms of mass except:

a. For pH, temperature, radiation, or other pollutants that cannot appropriately be expressed by mass;

b. When applicable standards and limitations are expressed in terms of other units of measurement; or

c. If in establishing technology-based permit limitations on a case-by-case basis, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

2. Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.

4VAC50-60-480. Duration of permits.

A. VSMP permits shall be effective for a fixed term not to exceed five years.

B. Except as provided in 4VAC50-60-330, the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

C. The board may issue any permit for a duration that is less than the full allowable term under this section.

D. A permit may be issued to expire on or after the statutory deadline set forth in §§301(b)(2) (A), (C), and (E) of the CWA, if the permit includes effluent limitations to meet the requirements of §§301(b)(2) (A), (C), (D), (E) and (F) of the CWA, whether or not applicable effluent limitations guidelines have been promulgated or approved.

4VAC50-60-490. Schedules of compliance.

A. The permit may, when appropriate, specify a schedule of compliance leading to compliance with the Act, the CWA and regulations.

1. Any schedules of compliance under this section shall require compliance as soon as possible, but not later than the applicable statutory deadline under the CWA.
2. The first VSMP permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge. For recommencing dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.
3. Schedules of compliance may be established in permits for existing sources that are reissued or modified to contain new or more restrictive water quality-based effluent limitations. The schedule may allow a reasonable period of time, not to exceed the term of the permit, for the discharger to attain compliance with the water quality-based limitations.
4. Except as provided in subdivision B 1 b of this section, if a permit establishes a schedule of compliance that exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.
 - a. The time between interim dates shall not exceed one year.
 - b. If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.
5. The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the department in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if subdivision 4 b of this subsection is applicable.

B. A VSMP permit applicant or permittee may cease conducting regulated activities (by terminating of direct discharge for VSMP sources) rather than continuing to operate and meet permit requirements as follows:

1. If the permittee decides to cease conducting regulated activities at a given time within the term of a permit that has already been issued:
 - a. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or
 - b. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit;
2. If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements no later than the statutory deadline;
3. If the permittee is undecided whether to cease conducting regulated activities, the board may issue or modify a permit to contain two schedules as follows:

a. Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date that ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

b. One schedule shall lead to timely compliance with applicable requirements no later than the statutory deadline;

c. The second schedule shall lead to cessation of regulated activities by a date that will ensure timely compliance with applicable requirements no later than the statutory deadline; and

d. Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under subdivision 3 a of this subsection it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities; and

4. The permit applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the board, such as a resolution of the board of directors of a corporation.